

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

)
TROUT POINT LODGE, LIMITED,)
A Nova Scotia Limited Company;)
VAUGHN PERRET and)
CHARLES LEARY,)
v.)
)
DOUG K. HANDSHOE)
)

CAUSE NO. 1:12cv90-LG-JMR

MOTION TO CONTINUE AND TO RESET SHOW CAUSE HEARING

NOW INTO COURT comes G. Gerald Cruthird, attorney for the defendant, Doug K. Handshoe, who respectfully moves this Honorable Court to continue and reset the show cause hearing directing that Plaintiffs Vaughn Perret and Charles Leary appear before the Court on September 21, 2017 at 10:00 a.m. to show why they should not be held in contempt for their failure to appear as ordered for a judgment debtor examination. The Court further ordered that, "Defendant Handshoe and his counsel shall appear at the scheduled hearing and be prepared to discuss the service issues outlined herein."

On August 30, 2017 Counsel for the Defendant filed with this Court Private Process Server Affidavits of Service of the Court's orders in this matter (ECF numbers 98, 99 and 100). Trout Point Lodge, Ltd. was properly served via the manager of the Lodge on August 17, 2017. However, the Affidavits of Service for

Leary and Perret show that Process Server Acker was unable to make contact with Plaintiffs Leary (ECF No. 99) or Perret (ECF No. 100). He instead left the court's orders with Trout Point Lodge Manager Ulysses Martin.

This Court's order dated July 28, 2017 previously found that:

With respect to Plaintiffs Perret and Leary, and as discussed at the hearing, the Court is concerned that these parties have not been provided adequate notice of the Court's Orders. Accordingly, this Court will order these Plaintiffs to appear before this Court on September 21, 2017, and show cause why they should not be held in civil contempt for failing to comply with the Court's [79] Order. Defendant Handshoe and his counsel must also be present and be prepared to discuss how timely service of this Order was achieved, including providing the Court with legal authority showing that service was adequate.

The methods of service on the Plaintiffs Leary and Perret by Mr. Acker in leaving the Court's orders with a third party who is not a family member does not comport to the definition of personal service under Federal Civil Procedure Rule 4(f)(2)(C)(i) or Mississippi Civil Procedure Rule 4(d). The Defendant avers that he attempted, via another Provincial Civil Constable, to personally serve the Court's orders upon Leary and Perret on dates as late as September 17, 2017 with no success. Therefore, notice of this Court's Show Cause orders for Plaintiffs Leary and Perret is likely still inadequate. Counsel for the Defendant has received no indication that Leary or Perret, who are self-represented, will attend tomorrow's hearing.

Defendant avers that continuing and resetting the hearing will not prejudice any other party should this Court grant the requested relief, which is not sought for delay or improper purpose but so that judicial resources are conserved and justice may be properly accorded the parties.

Respectfully submitted this 20th day of September, 2017,

/s/ G. Gerald Cruthird
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CERTIFICATE OF SERVICE

I, G. Gerald Cruthird, Attorney for Doug K. Handhoe, do hereby certify that I have this date electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification to all counsel of record upon filing by the Clerk and via U. S. Mail upon any non-ECF participants at their address of record at 189 Trout Point Road, Kemptville, Nova Scotia, B5A 5X9.

So certified, this 20th day of September, 2017,

/s/G. Gerald Cruthird
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